

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KATHERINE KING, Personal
Representative for the Estate of LMK, a
minor,

Plaintiff,

v.

UNITED STATES OF AMERICA and
DOYON SECURITY SERVICES, LLC,

Defendants.

NO. C11-5355 BHS

PRIVACY ACT STIPULATION AND
PROTECTIVE ORDER

**Noted for Consideration:
October 26, 2011**

Plaintiff Katherine King, Federal Defendant United States of America, and Defendant
Doyon Security Services, LLC, by and through their respective undersigned counsel, stipulate
and agree to the following:

1. This Stipulation and Order is agreed to and entered pursuant to Fed. R. Civ. P.
26(c), which provides for the issuance of protective orders limiting the disclosure of privileged
and confidential documents and information in appropriate circumstances, and 5 U.S.C. §§
552a(b)(11) and (g)(1), which provide an exception to the Privacy Act of 1974 for documents
and information released pursuant to a court order.

2. This Stipulation and Order relates to the above captioned action, which is an action
brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 and Washington

1 state common law.

2 3. Plaintiff Katherine King and Defendant Doyan Security Services, LLC ("Doyon")
3 have or may in the future commence discovery which seeks disclosure of documents and
4 information which Federal Defendant United States contends may be protected from release by
5 the Privacy Act of 1974, 5 U.S.C. § 552a or which is otherwise highly confidential and sensitive.
6 Documents encompassed by this Stipulation and Order include primarily records generated by
7 federal law enforcement in connection with the criminal investigation of Pvt. Timothy Bennet.
8 These records contain personal identifiers and information which is otherwise highly personal,
9 confidential, or sensitive.

10 4. While Federal Defendant United States contends that disclosure of some of these
11 documents and records ordinarily is prohibited in civil litigation, the Privacy Act provides, as an
12 exception, that such records may be released "pursuant to the order of a court of competent
13 jurisdiction." *See* 5 U.S.C. § 552a(b)(11). An order of this Court would therefore provide a
14 basis for release of the requested documents and records to the Plaintiff and Defendant Doyan
15 pursuant to the Privacy Act and Fed. R. Civ. Pro. 26(c), as well as insulate the Federal Defendant
16 from potential liability for improper disclosure. *See* 5 U.S.C. § 552a(g)(1).

17 5. The purposes of this Stipulation and Order include protecting the confidentiality of
18 certain documents and information, protecting the identities of witness, employees, and others,
19 and ensuring that the parties can obtain and pursue discovery with a minimum of delay and
20 expense. Accordingly, the parties, subject to the Court's approval, stipulate and agree that the
21 procedures set out in the ensuing paragraphs shall be followed with respect to information and
22 documents contained in records produced by Federal Defendant United States or its
23 representatives.

24 6. When used in this Stipulation and Order, the word "documents" means all written,
25 recorded, electronic or graphic matter whatsoever, including, but not limited to, interrogatory
26 answers; requests for admissions and responses thereto; documents produced by the parties or
27 third-parties in this action, whether pursuant to Rule 34, subpoena, or by agreement; deposition
28 transcripts and exhibits; and any portion of any court papers which quote from any of the

1 foregoing.

2 7. All documents designated as "CONFIDENTIAL" by Federal Defendant United
3 States shall be subject to this Stipulation and Order and shall be used solely in connection with
4 this lawsuit. No document or information contained in a document designated as
5 "CONFIDENTIAL" may be released or disclosed to any person other than:

- 6 a. the parties and their counsel in this action;
- 7 b. legal assistants or secretaries, paralegal assistants, and other employees and agents
8 of counsel who are engaged in assisting counsel in the preparation of this action;
- 9 c. persons who provided the confidential information;
- 10 d. witnesses, and outside consultants and experts consulted or retained for the
11 purpose of assisting in the preparation of this action, upon condition that, before
12 making disclosure, counsel must obtain and retain an agreement in writing from
13 the witness, outside expert or consultant reciting that he or she has read a copy of
14 this Stipulation and Order and agrees to be bound by its provisions; and
- 15 e. any other person authorized by counsel for Federal Defendant to examine such
16 materials.

17 8. Any person having access to confidential information shall be informed that it is
18 Confidential and subject to a non-disclosure Order of the Court. No such person shall release or
19 disclose those materials to any person other than those specifically identified in paragraph 7,
20 above, without further order of the Court or stipulation of the parties.

21 9. Nothing in this Stipulation and Order shall bar or otherwise restrict counsel from
22 rendering advice to her/his client with respect to this litigation, doing anything necessary to
23 prosecute this action, or furthering the interests of her/his client, provided, however, that the
24 Plaintiff's counsel and Defendant Doyan's counsel shall not release or disclose any confidential
25 document to any other person where disclosure would be contrary to the terms of this Stipulation
26 and Order.

27 10. In the event that the Plaintiff or Defendant Doyan gives written notice to the
28 Federal Defendant challenging designation of specific documents as Confidential, and the parties

1 cannot resolve the matter informally, the Plaintiff or Defendant Doyon shall have ten judicial
2 days to file a motion to lift the protections afforded the specific documents at issue under Federal
3 Rule of Civil Procedure 26(c). During the ten judicial days and the pendency of any challenge,
4 the parties will treat the documents as Confidential.

5 11. If counsel intend to file any motion, opposition, reply or any other filing with the
6 Court and attach thereto or set forth therein any document or information that Federal Defendant
7 has designated as Confidential, counsel responsible for the filing shall file a motion requesting
8 leave to file the document under seal under Court Rule 5(g).

9 12. Within 60 days of the termination of this litigation, including any appeals
10 therefrom, documents containing Confidential information and all copies and any portions
11 thereof shall be returned to Federal Defendant United States or shredded, subject to applicable
12 law.

13 13. Any specific part or parts of the restrictions imposed by this Stipulation and Order
14 may be terminated at any time by an order of the Court. The Court may change the terms of this
15 Stipulation and Order on its own motion after notice to the parties and an opportunity to be
16 heard.

17 14. If necessary and appropriate, and with the Court's approval, the parties will file a
18 revised Stipulation and Order prior to trial to address any circumstances at trial not specifically
19 covered by this Stipulation and Order.

20 15. This Stipulation and Order is without prejudice to the rights of any party to seek or
21 object to discovery permitted by Federal Rules of Civil Procedure, or by any statute or other
22 authority, or to the rights of any party to make evidentiary objections at trial.

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25 DATED this 26th day of October, 2011.
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15 **PROTECTIVE ORDER**

16 Based upon the foregoing Stipulation, IT IS SO ORDERED.

17 DATED this 28th day of October, 2011.

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20 BENJAMIN H. SETTLE
21 United States District Judge

22 Presented by:

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24 UNITED STATES ATTORNEY

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